

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, Hon'ble JUDICIAL MEMBER
AND Dr. ARJUN LAL SAINI, Hon'ble ACCOUNTANT MEMBER

(Virtual Hearing)

आ.अ.सं./I.T.A No.2080/AHD/2017

निर्धारण वर्ष/Assessment Year: 2008-09

Manishkumar Ghanshyambhai Patel, C/o.Shri Dhawal Desai, CA, 151, Nilkanth Nagar Soc, Gujarat Housing Board, Bharuch – 392 002. [PAN: APYPP 2634 F]	Vs.	The Income Tax Officer, Ward-5, Valsad.
अपीलार्थी / Appellant		प्रत्यर्थी/Respondent

निर्धारितीकीओर से /Assessee by	None.
राजस्वकीओर से /Revenue by	Smt. Anupama Singla – Sr.DR

सुनवाई की तारीख/ Date of hearing:	06.01.2021
उद्घोषणा की तारीख/Pronouncement on:	06.01.2021

आदेश / O R D E R

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the Assessee is directed against the order of Ld.Commissioner of Income Tax(Appeals)-13, Ahmedabad dated 21.06.2017 for the Assessment Year 2008-09. The assessee raised following grounds of appeal:

- “1. In view of the facts and circumstances of the case, the CIT(a) ought to have heard and dispose off the appeal on merits instead of dismissing it for t he alleged failure by the appellant to file it electronically and hence Your Appellant prays that the order passed by Ld. CIT(A)-13, Ahmedabad be quashed and the appeal be restored to his file for disposal a fresh after giving the reasonable opportunity of being heard to the appellant..
2. Such other relief(s) to which the appellant may be lawfully entitled to.”

2. Brief facts of the case are that the assessee is a NRI (Non Resident Indian). No Return of Income was filed by the assessee for the A.Y. 2007-08. The Assessing Officer (AO) received information that assessee invested Rs.4 lakhs in Unit Trust of India (UTI) Mutual Fund. On the basis of such information, the case was reopened under section 147 of the Act. A notice under section 148 was issued to assessee on 30.03.2015 to file Return of Income within 30 days of receipt of the notice. The AO recorded that the assessee did not responded to notice under section 148 of the Act. Reasons recorded were allegedly provided to the assessee. Along with notice under section 142(1) dated 28.10.2015. The AO further recorded that vide submission dated 12.01.2016 and 19.02.2016. The assessee provided statement of UTI Mutual Fund and ICICI Bank statement. As per AO, the date of withdrawal could not be confirmed from the bank statement. The AO made addition under section 69 of the Act by taking view that the assessee made unexplained investment. In the assessment order dated 24.02.2016 passed under section 147 r.w.s 144 of the Act.
3. Aggrieved by the additions in the assessment order, the assessee filed appeal before the ld.CIT(A). In Form No.35, copy of which is filed before this Tribunal. The assessee claims that assessment order dated 24.02.2016 received on 19.03.2016. The appeal was filed on 05.04.2016 [as recorded by the ld.CIT(A)]. The appeal of

- assessee was not admitted by the ld. CIT(A) by taking view that assessee filed manual appeal, though the assessee was mandatorily required to file appeal electronically w.e.f.01.03.2016.
4. Further aggrieved, the assessee has filed this appeal before Tribunal. Initially, this appeal was filed before the ITAT Ahmedabad Bench, however, vide order dated 25.06.2018 this appeal was transferred ITAT Surat Bench. As the assessee is a resident of District Bharuch.
 5. None appeared on behalf of the assessee, nor is any application for adjournment filed on record.
 6. Perusal of record reveals that authority letter in favour of Shri Kamlesh N.Bhatt, CA is on record. Therefore, we left no option except to decide the appeal after hearing of submission of ld. Departmental Representative (DR) for the Revenue and the material available on record.
 7. The ld. DR for the Revenue submits that the assessee filed paper appeal before Ld. CIT(A), instead of filing appeal electronically. The ld. DR further submits that in para 1.4 of the impugned order, ld.CIT clearly held that the assessee filed paper appeal after cut-off date as provided in CBDT Notification No.50637/(e) dated 01.03.2016 r.w.s 249 (1) r.w.s 295 of the Act. The assessee has not followed the mandate of Rule 45 of Income Tax Rule 1962.
 8. We have considered the submission of ld. DR for the Revenue and the statement of facts pleaded by the assessee in Form 36 (Appeal Form). In the statement of facts, the assessee stated that he is

nonresident and no Return of Income was filed for A.Y. 2008-09 as there was no taxable income for said year. The AO issued notice under section 148 on 30.03.2015 to file Return of Income. In pursuance of notice under section 148 of the Act, no Return of Income was filed by the assessee as there was no taxable income of the assessee. This fact was conveyed to the AO vide letter dated 09.04.2015. The AO further served notice under section 142(1) of the Act. In compliance to notice under section 142(1) of the Act, the assessee furnished all required documents. The AO made addition on the basis of information available with him by taking view that investment and the date of withdrawal were not matching and entire investment were treated as unexplained investment. Further in the grounds of appeal, the assessee raised the issue that reasons recorded not provided to the assessee. The AO failed to consider the submission and explanation furnished by the assessee. The addition was made without any material and sanction of law.

9. We have noted that the ld.CIT(A) dismissed the appeal of the assessee due to technical reason as Rule 45 of Income tax Rules 1962 was amended w.e.f. 01.03.2016 and that appeal was instituted on 05.04.2016. The ld.CIT(A) dismissed the appeal for technical reasons and without discussing the merit of the case as mandated under section 250(6) of the Act. We have further noted that, though the Rule 45 amended w.e.f 01.03.2016, without corresponding amendment in Section 249 of Income Tax Act. It is

settled position of law that Rule cannot substitute the statutory provision. Hence, keeping in view of the aforesaid facts, the appeal is restored back to the file of Ld. CIT(A) to adjudicate the appeal on merit. The assessee is also directed to comply the procedure for filing appeal electronically as per the amended Rule 45 of Income Tax Rules 1962, if no such appeal is filed electronically. The assessee is given liberty to file proper application for seeking condonation of delay, if so required for admission of appeal before the ld.CIT(A). The ld.CIT(A) is further directed to consider the application for condonation of delay, if so filed, sympathetically by taking facts for his consideration that after dismissal of his appeal by first appellate authority, the assessee was pursuing his remedy before the Tribunal for seeking restoration of appeal, accordingly, appeal of the assessee is allowed for statistical purpose.

10. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced on 06-01-2021 at the time of hearing appeal.

Sd/-
(Dr.ARJUN LAL SAINI)

(लेखा सदस्य/ACCOUNTANT MEMBER

सुरत/ **Surat**, दिनांक **Dated:** 6th Jan, 2021 / S.Gangadhara Rao, Sr.PS

Sd/-
(PAWAN SINGH)

(न्यायिक सदस्य/JUDICIAL MEMBER)

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

/ / **TRUE COPY** / /

Assistant Registrar, Surat